IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.**108** OF **1992**

The State of Maharashtra)
(through Collector) the Special)
Land Acquisition Officer No.12)
Satara) ...Appellant.

(Orig. Opponent)

V/s

1. Ajit Pannalal Sanghavi,)
aged 35 years, Occupation :)
Trade, r/o. 1228 E- Bagal Chowk)
Kolhapur.)
)
2. Nitin Pannalal Sanghavi,)
aged 32, Occ: Trade, r/o.)
1228, E-Bagal Chowk, Kolhapur)
)
3. Shirish Pannalal Sanghavi,)
aged 28, Occ: Trade, r/o.1228,)
E-Bagal Chowk, Kolhapur.)...Respondents
(Orig.Claimants)

Mr. K.K. Tated, AGP for the appellant - State.

Mr. G.R. Rege with Ms. Shakuntala Mudbidri for the respondents.

ALONG WITH
CROSS-OBJECTION STAMP NO.**10696** OF **1992**
IN
FIRST APPEAL NO. **108** OF **1992**

The State of Maharashtra)
(through Collector) the Special)
Land Acquisition Officer,)
No.12, Satara.)..Appellant
(Orig.Referee)

V/s

1. Ajit Pannalal Sanghavi)
aged 36 years,)
Occupation : trader,)
r/o 1228 E-Bagal Chowk,)
Kolhapur.)

)
2. Nitin Pannalal Sanghavi,)
aged 32, Occupation : Trader,)
R/o. 1228, E-Bagal Chowk,)
Kolhapur.)
)
3. Shirish Pannalal Sanghavi,)
aged 28, Occupation: Trader,)
R/o. 1228, E- Bagal Chowk,)
Kolhapur.)..Respondents
(Ori.Claimants)

Mr. K.K. Tated, AGP for the appellant - State.

Mr. G.R. Rege with Ms. Shakuntala Mudbidri for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 2nd September, 2005.

ORAL JUDGMENT: (Per R.M.S. KHANDEPARKAR, J.)

1. Heard.

2. This appeal and cross-objections arise from the judgment dated 05/06/1990 passed in Land Reference No. 1 of 1987 whereby the Reference Court while allowing the application filed by the claimants under section 18 of the Land Acquisition Act,1894(hereinafter called as "the said Act") has declared that the actual area acquired was 7110 sq.meters and the total compensation payable for the land acquired to be Rs 11.47.554/- besides other usual benefits available under the said Act as against the compensation which was awarded by the Land Acquisition Officer to the tune

of Rs 1,63,350/-. The impugned judgment is sought to be challenged by the State as well as the claimants on various grounds. However, it is not necessary to deal all those issues sought to be raised in the matter. Suffice to refer to only one issue which is sought to be raised on behalf of the appellant - State that the Reference Court had no jurisdiction to entertain the reference in view of the fact that the application for reference under section 18 was filed beyond the period of limitation prescribed thereunder. It has to be noted that the appellant - State has not disputed the declaration as regards the area of the land which is acquired which has been confirmed by the Reference Court.

3. The only point which, therefore, arises in the matter is : whether the reference to the Reference Court under section 18 was within the period of limitation prescribed under the law?

4. Undisputed facts are that the Land Acquisition Officer declared an award in terms of section 11 of the said Act on 17/06/1986 which was followed by notice under section 12(2) of the said Act on 25/06/1986. The claimants applied for certified copy of the award on 31/06/1986. The certified copy of the

award was received on 18/09/1986. Thereafter, the claimants applied for reference under section 18 on 22/10/1986.

5. It is the case of the appellant that since the intimation about the award was received by the claimants prior to 31/06/1986 and as long back as on 25/06/1986, the application could have been filed within 42 days therefrom and, therefore, the reference filed on 22/10/1986 was beyond the period of limitation and, as such, the Collector receiving such application had no power to accept the same and to refer the matter to the Reference Court. On the other hand, it is the case of the claimants that pursuant to the receipt of the notice under section 12(2), they applied for certified copy of the award on 31/06/1986 i.e. immediately after receipt of the notice and the copy was made available to them on 18/09/1986 and, therefore, the application was within the period of limitation, considering the time spent for obtaining the certified copy of the award.

6. The learned Assistant Government Pleader appearing for the State, placing reliance in the decision in the matter of State of Punjab and another vs. Satinder Bir Singh reported in **(1995) 3 SCC 330**, Officer on

Special Duty (Land Acquisition) and another Vs. Shah Manilal Chandulal Etc. reported in **1996(1) Mh.L.J. 609** and of the Full Bench of this Court in Suresh Marutrao Jadhav Vs. State of Maharashtra & Anr. reported in **2001 Vol. 103(4) Bom. L.R. 897**, submitted that the limitation for filing application under section 18 of the said Act commences immediately on service of notice under section 12(2) of the said Act and it does not, in any way, get prolonged or postponed on account of time spent for obtaining a certified copy of the award as, for the purpose of filing of the application under section 18, no such copy is either required nor the application under section 18 is in the nature of an appeal against the award of the Land Acquisition Officer. The learned advocate appearing on behalf of the claimants, on the other hand, submitted that the interested persons are put to difficulty in filing application under section 18 without being made aware of the contents of the award. He also submitted that the point of limitation was never raised either at the threshold of filing of the application or even before the Reference Court and it is only when the matter has reached in this Court at the stage of final hearing that such point was sought to be raised. The law of limitation does not take away right but only debars the remedy.

Considering the same, it was necessary for the respondents to raise such issue at the appropriate stage. Having failed to raise the same at appropriate stage, the State is not entitled to raise the said issue at this stage. He also submitted that Article 300-A of the Constitution of India clearly prohibits the State from acquiring the land without following due process of law and the expression "due process of law" would include the appropriate and just compensation. In the case in hand, compensation which has been granted cannot be said to be just and appropriate and, therefore, allowing the State to raise the point of limitation and to non-suit the claimants on that ground would virtually amount to defeating the very right assured to the claimants in terms of Article 300-A of the Constitution.

7. As regards the contention that the appellant - State has raised the point of limitation only at the time of arguments in appeal, it is to be noted that the contention is not only devoid of substance but contrary to the records. The memo of appeal filed by the State specifically refers to the said ground under clauses 9 and 10 which read thus:-

"9. The lower court ought to have held that the land owner ought to have filed his claim within the stipulated statutory period.

10. The lower court ought to have held that the land reference under section 18 was beyond the period of limitation."

8. Besides, even though the ground relating to limitation was not raised by the appellant before the Reference Court, it was obligatory for the Reference Court to consider the same, as it goes to the root of the jurisdiction of the Reference Court to entertain the reference. It is primarily for the Reference Court to ascertain whether the reference is within the period of limitation, otherwise to reject the same in limine, albeit, after hearing the parties on the said point.

9. In any case, it is not correct to say that the point of limitation was not raised before the Reference Court or it was not brought to the notice of the Reference Court or the claimants, while the matter was before the Reference Court. In fact, the claimants themselves in the application under section 18 of the said Act had clearly stated that the Land

Acquisition Officer had passed the award on 17/06/1986 and it was intimated to them on 25/06/1986 and, thereafter, the claimant No.1 applied for certified copy of the award on 31/06/1986, that the same was received on 18/09/1986 and that, therefore, the Reference Application was well within time limit. Being so, the claimants were fully aware of the limitation prescribed for filing the application under section 18 of the said Act. The claimants were also aware that it was their obligation to satisfy the Collector/Court about the compliance of the limitation requirement under section 18 of the said Act.

10. Considering the law laid down by the Apex Court in Bhagwati Prasad vs. Chandramaul reported in **AIR 1966 SC 735** wherein it was held that "if a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or

even obscurely, in the issues ...", and reiterated in Bhim Singh (dead) by L.R.s and another vs. Kan Singh reported in **AIR 1980 SC 727**, what is required to be seen in such circumstances is that did parties know that the matter in question was relevant for adjudication and to obtain the relief asked for in the matter.

11. In the case in hand, the claimants not only knew that they had to discharge the burden to prove that the application under section 18 was filed within the period of limitation prescribed thereunder but claimant No.1 had also led evidence in that regard and was subjected to cross-examination. In the examination-in-chief of the claimant No.1 he had stated that:

> "I do not admit the contentions raised by the Govt. in W.S. I had asked for copies of documents through Collector but I have not received the same till today. I have produced the letter from Collector which is at Exh. 42. Draft award was passed on 11.4.1985. I had received notice u/s 12 of Acquisition Act on 19.6.1986. The final award was passed on 17.6.1986."

and in his cross-examination, it was stated that:

> "My land was not involved in acquisition proceeding during 1965 to 1979. The award regarding my land was passed afterwards. It is true that there are names of two Spel. Land Acquisition Officers in the award in question. I have received the copy of the award dt. 17.6.86. I had received the copy of the award dt. 11.4.1985 which was considered by first S.L.O. It is true that the copy of the award dt. 17.6.1986 was recommendation of IInd S.L.O. This was the Final Award. I have challenged the award dt. 17.6.1986 in this Court. I again say that I have challenged both the awards. It is true that award dt. 11.4.1985 is referred in award dt. 17.6.1986. The S.L.O. was transferred who has prepared award dt. 11.4.1985. The work was pending still the IInd S.L.O. was posted in his place. The IInd S.L.O. completed the work of acquisition which was left by Ist S.L.O. It is true that I moved the Collector for referring the matter to Civil Court u/s 18 of the L.A. Act in respect

of dt. 17.6.1986. It is true that, after declaration of award dt. 17.6.1986 notices under Sec. 12 were issued."

The above facts disclose that the award, in fact, was ready on 11/04/1985 and a copy thereof was available with the claimants. As the same was not signed because the concerned S.L.O. was transferred, it was required to be signed by the second S.L.O. and that is what was done on 17/06/1986 for the purpose of its declaration under section 11 of the said Act. The above facts also reveal the knowledge of the contents of the award to the claimants even on the date of the receipt of the notice under section 12 of the said Act itself. The application filed under section 18 of the said Act was, therefore, clearly beyond the period of six weeks from the date of service of notice under section 12.

12. The rules of procedure are made to facilitate the Courts to organize the proceedings before it in a disciplined manner and, at the same time, to enable the parties to assist the Court in arriving at the truth. It is the duty of the party approaching the Court for any remedy to reveal the facts within its knowledge and which would be necessary to substantiate

his or her right in order to secure the relief sought in the proceedings initiated. Being so, a party seeking relief for enhancement of compensation under section 18 of the said Act has to reveal in his application the fact disclosing subsistence of his right to seek a remedy, he is seeking in the matter. This is absolutely necessary to enable the Collector to make a reference and to the Court to entertain the reference. Neither the Collector has power to refer the application filed beyond the period of limitation nor the Court can entertain such application. In case, the delayed application is referred to the Court, it would be a reference without jurisdiction and, therefore, void ab-initio.

13. As far as section 18 of the said Act is concerned, the proviso to section 2 thereof clearly provides a period of limitation for filing the application. Accordingly, in case of intimation of the award, either the claimant being present at the time of declaration of the award or being informed in terms of notice under section 12(2), the limitation prescribed is of six weeks from the date of the award or the date of receipt of the notice. In case, there is neither notice issued to the claimant nor he had an opportunity to remain present at the time of

declaration of the award, then the period prescribed is of six months from the date of the Collector's award. Needless to say that this period of six months will have to be counted from the date of the knowledge of the award. It is also settled law that the Collector or the Land Acquisition Officer acting under section 18 in relation to the application filed thereunder is not a Court and, therefore, the provisions of Limitation Act, 1963 are not applicable and hence the authority has no power to condone the delay. In other words, the claimant desiring to seek reference on being dissatisfied about the compensation or other things mentioned in section 18 of the said Act, has to file the application within a period of limitation prescribed thereunder.

14. Once such an application is referred to the Court, merely because there is such reference, it does not absolve the Court of its obligation to exercise the necessary caution which it has to exercise in terms of section 3 of the Limitation Act. Section 3 of the Limitation Act enjoins the Court to verify whether the proceedings placed before it are within the period of limitation prescribed for initiating such proceedings or not. Being so, once the reference is placed before the Reference Court, it is the duty

of the Reference Court to ascertain whether the reference had been filed before the competent authority within the period of limitation or not. If the Reference Court finds that the reference was filed within the period of limitation, the Reference Court can proceed with the matter and if it finds that the reference to have been filed after the period of limitation prescribed under section 18, the Reference Court has no option but to reject the reference being beyond the period of limitation.

15. The Apex Court in Satinder's case (supra) had clearly ruled that the limitation for filing an application under section 18(2) as regards the person who receives notice under section 12(2), would begin to operate moment such notice is received by the claimant. Further, in Shah Manilal's case (supra), the Apex Court has ruled that in view of specific limitation provided under the proviso to section 18(2) of the Land Acquisition Act, sub-section (2) of section 29 of the Limitation Act cannot be applied to the proviso to sub-section (2) of section 18 and the Collector is not a 'Court' when he acts as a statutory authority under section 18(1) and the section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under the proviso to

section 18(2).

16. The Full Bench of this Court in Suresh Marutrao Jadhav's case (supra) has also held that sub-section 3 of section 18 notwithstanding, the Collector under section 18(1) of the Act performs a statutory function, and does not act as a Court. Sub-section (2) of Section 29 of the Act cannot be applied to the proviso to sub-section (2) of Section 18 and the Collector is not a Court when he acts as a Statutory Authority under section 18(1), and, therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under the proviso to section (2) of Section 18. The Full Bench has relied upon the decision of the Apex Court in Shah Manilal's case (supra), apart from various other cases referred to therein. It is, therefore, clear that once the reference is made on the basis of the application which has been filed beyond the period of limitation prescribed under section 18, such a reference would be ab-initio bad-in-law and Reference Court cannot assume jurisdiction on the basis of such reference which is void ab-initio and, therefore, merely because the party does not raise the point of limitation, it would not validate the proceedings sought to be initiated under section 18 of the said

Act. Inaction on the part of the parties to take necessary objection as regards the absence of jurisdiction to deal with the matter by the Reference Court on account of reference being made beyond the period of limitation, will not bestow jurisdiction upon the Court which it lacked at the time when the reference itself was made. No amount of consent either express or otherwise on the part of the parties can give jurisdiction to the Court which it does not have. Being so, the failure on the part of the respondents to raise such issue in the Reference Court will not enure to the benefit of the claimants to contend that no such issue can be raised at the appellate stage. Besides, the powers of the appellate Court are on par with those of the original Court in terms of section 107 and it is the duty of the appellate Court to pass appropriate order which is required to be passed in the matter in view of the provisions comprised under Order XLI Rule 33 CPC. These provisions of law are also attracted in the appeal against the award by the Reference Court under the said Act in view of sections 53 and 54 of the said Act.

17. As regards the grievance about the rights ensured under Article 300-A of the Constitution of India would

be affected in case the State is allowed to raise the issue of limitation in the matter, the arguments canvassed in that regard do not appeal to our mind. Undisputedly, Article 300-A prohibits taking away somebody's property otherwise than by authority of law but that does not debar the Government from regulating the process of taking over the properties and that is what has been done under the said Act and Rules framed thereunder. Merely because the party is dissatisfied with the quantum of compensation received for the land acquired, it cannot be said that the acquisition is otherwise than the authority of law. Certainly the aggrieved party is entitled to seek reference under section 18. However, that has to be done within the period of limitation. Merely because there is period of limitation prescribed for claiming enhancement of compensation that does not mean to say that it is otherwise than the authority of law. Being so, there is absolutely no substance in the arguments that the rights assured under Article 300-A of the Constitution of India would be affected if the State is allowed to raise the issue of limitation at the appellate stage in the land acquisition proceedings.

18. Section 12(2) of the said Act speaks of notice of the award and not a copy of the award to the

interested persons, while the objection under section 18 could be in relation to measurement of land, the amount of compensation, the persons to whom it is payable and the apportionment of the compensation. In other words, if notice issued under section 12(2) in relation to the award passed under section 11 contains information regarding identity and the area of land acquired, the rate of the compensation awarded and the share of the addressee of the notice in the compensation awarded then it could be sufficient compliance of the provisions of section 12(2) of the said Act which would enable the interested person to file objections, if any, under section 18 in case he is dissatisfied on account of any of the factors mentioned in the said provision of law. For this reason, he need not have copy of the award itself. Once reference is made, he can even elaborate his grounds of objections before the Reference Court and the Reference Court can allow amendment by resorting to the provisions of Order VI Rule 17 CPC. The learned Additional Government Pleader is justified in contending that the proceedings under section 18 are not appellate proceedings but are original in nature and the burden squarely lies upon the claimant to justify his objections.

19. For the reasons stated above, therefore, the issue framed for consideration is to be answered in the negative and it has to be held that the reference in hand was bad in law having filed beyond the period of limitation and, therefore, the Reference Court could not have entertained the same and, on that ground itself, the reference is liable to be rejected. It is, however, clarified that the confirmation regarding area under the impugned judgment that the area acquired is 7110 sq. meters is not disputed. With these observations, the appeal filed by the State is allowed and the cross-objections filed by the claimants are dismissed. There shall be no order as to costs. It was stated that pursuant to the impugned award passed by the Reference Court, the State has already paid the excess amount. Needless to say that the amount paid over and above the amount awarded by the Land Acquisition Officer will have to be refunded by the claimants within a period of 12 weeks from today alongwith interest @ 6% from the date of receipt of the amount till the date of repayment. Order accordingly.

20. At this stage, the learned advocate for the claimants pray for stay of the order passed today. Since the reference itself has been held to be beyond

the period of limitation, the question of grant of stay to the order does not arise. The request is rejected.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)